

finds that the request raises a substantial factual issue, he/she shall provide the manufacturer a hearing in accordance with § 94.216 with respect to such issue.

**§ 94.222 Certification of engines on imported vessels.**

For marine engines subject to the requirements of this part that are installed on imported vessels, the Administrator may specify alternate certification provisions as necessary.

**Subpart D—Certification Averaging, Banking, and Trading Provisions**

**§ 94.301 Applicability.**

Marine engine families subject to the standards of subpart A of this part are eligible to participate in the certification averaging, banking, and trading program described in this subpart. The provisions of this subpart apply to manufacturers of new engines that are subject to the emission standards of § 94.8. To the extent specified in 40 CFR part 60, subpart IIII, stationary engines certified under this part and subject to the standards of 40 CFR part 60, subpart IIII, may participate in the averaging, banking, and trading program described in this subpart.

[71 FR 39184, July 11, 2006]

**§ 94.302 Definitions.**

The definitions of Subpart A of this part apply to this subpart. The following definitions also apply:

*Applicable standard* means a standard that would have otherwise been applicable had the engine not been certified under this subpart to an FEL different than that standard.

*Broker* means any entity that facilitates a trade between a buyer and seller.

*Buyer* means the entity that receives credits as a result of trade.

*Reserved credits* means credits that have been generated but have not yet been reviewed by EPA or used to demonstrate compliance under the averaging provisions of this subpart.

*Seller* means the entity that provides credits during a trade.

**§ 94.303 General provisions.**

(a) Participation in the averaging, banking, and trading program is voluntary. A manufacturer may choose to involve some or all of its engine families in any or all aspects of the program.

(b) An engine family is eligible to participate in the certification averaging, banking, and trading program for THC+NO<sub>x</sub> and PM emissions only if it is subject to regulation under this part with certain exceptions specified in paragraph (c) of this section. No averaging, banking, and trading program is available for meeting the CO standards of this part.

(c) Engines may not participate in the certification averaging, banking, and trading program if they are exported. Only engines certified under this part are eligible for generation or use of credits in this certification averaging, banking, and trading program. Engines certified to the Blue Sky provisions of § 94.8(f) are not eligible for inclusion in this certification averaging, banking, and trading program.

(d) Averaging involves the generation of credits by a manufacturer for use by that same manufacturer in the same calendar year. A manufacturer may use averaging during certification to offset an emission exceedance of an engine family caused by an FEL above the applicable emission standard, subject to the provisions of this subpart.

(e) Banking involves the generation of credits by a manufacturer in a given calendar year for use in a subsequent model year. A manufacturer may bank actual credits only after the end of the calendar year and after EPA has reviewed the manufacturer's end-of-year reports. During the calendar year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging in the end-of-year report. Credits declared for banking from the previous calendar year that have not been reviewed by EPA may be used in averaging or trading transactions. However, such credits may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

(f) Trading involves the sale of banked credits for use in certification of new engines under this part. Only banked credits may be traded; reserved credits may not be traded.

**§ 94.304 Compliance requirements.**

(a) Manufacturers wishing to participate in certification averaging, banking and trading programs shall select a FEL for each engine family they wish to include. The level of the FEL shall be selected by the manufacturer, subject to the upper limits described in paragraph (m) of this section. An engine family certified to an FEL is subject to all provisions specified in this part, except that the applicable FEL replaces the applicable THC+NO<sub>x</sub> and PM emission standard for the family participating in the averaging, banking, and trading program.

(b) A manufacturer may certify one or more engine families at FELs above or below the applicable emission standard, provided the summation of the manufacturer's projected balance of all credit transactions in a given calendar year is greater than or equal to zero, as calculated for each family under § 94.305 and reported under § 94.309.

(c) Manufacturers certifying engine families with FELs exceeding the applicable emission standard shall obtain emission credits in amounts sufficient to address the shortfall. Credits may be obtained from averaging, banking, or trading, subject to the restrictions described in this subpart.

(d) Manufacturers certifying engine families with FELs below the applicable emission standard may generate emission credits to average, bank, or trade, or a combination thereof.

(e) An engine family may not generate credits for one pollutant while also using credits for another pollutant in the same model year.

(f) Credits may only be used for certification; they may not be used to remedy a violation of the FEL determined by production line or in-use testing. Credits may be used to allow subsequent production of engines for an engine family failing production line testing if the manufacturer elects to recertify to a higher FEL.

(g) [Reserved].

(h) If an FEL is changed after initial certification in any given model year, the manufacturer must conduct production line testing to verify that the emission levels are achieved, with one exception: when an FEL is changed immediately after (and because of) a production line testing failure, additional verification testing is not required.

(i) Manufacturers participating in the averaging, banking and trading program must demonstrate compliance with the applicable emission standards at the end of the model year. Manufacturers that have certified engine families to FELs above the applicable emission standards and do not have sufficient emission credits to offset the difference between the emission standard and the FEL for such engine families will be in violation of the conditions of the certificate of conformity for such engine families. The certificates of conformity may be voided *ab initio* for those engine families.

(j) In the event of a negative credit balance resulting from a credit trade, both the buyer(s) and the seller(s) are liable, except in cases involving fraud. Certificates of all engine families participating in a negative trade may be voided *ab initio*.

(1) Where a buyer of credits is not responsible for causing the negative credit balance, the buyer is only liable to supply additional credits equivalent to any amount of invalid credits that the buyer used for its engine family(ies).

(2) Credit holders responsible for the credit shortfall may be subject to the requirements of § 94.309(g)(3).

(k) The following provisions limit credit exchanges between different types of engines:

(1) Credits generated by Category 1 engine families may be used for compliance by Category 1 or Category 2 engine families. Credits generated from Category 1 engine families for use by Category 2 engine families must be discounted by 25 percent.

(2) Credits generated by Category 2 engine families may be used for compliance only by Category 2 engine families.

(3) Credits may not be exchanged between recreational and commercial engines.

(1) Credit life shall be unlimited.